



March 29, 2001

Ms. Lisa Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2001-1259

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145412.

The City of Corpus Christi (the "city") received a request for the "Waste Water Management history" pertaining to a specified address, including "any complaints/claims on [the] property since it was built in 1983." You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

At the outset, we note that the information you have submitted for our review, contained in exhibit C, consists only of 6 pages, each titled "Wastewater Division Crew Leader Daily Report." This information apparently pertains only to the period from December 2000 to January 2001. You have submitted no information responsive to the request for "complaints/claims on [the] property since it was built in 1983." A governmental body has a good faith duty to relate a request for information to the records it holds. Open Records Decision No. 561 at 8 (1990). You do not advise this office whether the submitted information is the sole responsive information held by the city, nor do you assert that the submitted documents comprise a representative sample of the responsive information. See Gov't Code § 552.301(e)(1)(D).

To the extent the city holds other information that is responsive to the request, the city has not complied with all of the requirements of section 552.301 of the Government Code. Such

information, if it exists, is therefore “presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.” Gov’t Code § 552.302. You have not shown a compelling reason to overcome the section 552.302 presumption that the information is public. Accordingly, if the city holds information responsive to the request that was not submitted for our review, the city must release that information to the requestor.¹ We next address the information contained in the submitted exhibit C.

Section 552.103(a) of the Government Code states:

Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref’d n.r.e.); Open Records Decision No. 588 (1991).

As to the first prong of the above-stated test, litigation must be pending or reasonably anticipated on the date that the information is requested. Gov’t Code § 552.103(c). We note that the city received the present request for information on January 8, 2001. You contend that the city reasonably anticipated litigation on that date. This office has stated that a governmental body may establish that litigation is reasonably anticipated for purposes of section 552.103 by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) stating that the letter complies with the notice of claim provisions of the Texas Tort Claims Act (“TTCA”) or applicable municipal ordinance. Open Records Decision No. 638 (1996). You have provided this office a notice which you state was received by the city on January 3, 2001 and that, you represent, complies with the notice of claim provisions of the TTCA as well as “the notice requirements of applicable [city] ordinances and [the] city charter.” We accordingly find that the city reasonably anticipated litigation when the present information request was received.

¹ Assuming such information exists, because you have not submitted the information, we have no basis for finding it confidential. *See* Gov’t Code § 552.352. Thus, we have no choice but to order the information released per section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this decision in court as outlined below.

As to the second prong of the 552.103 test, we have examined the submitted information and your arguments, and we conclude that this information relates to the anticipated litigation. If the opposing party in the litigation has seen or had access to this information, there is no section 552.103 interest in withholding the information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). We have no indication, however, that this is the case with reference to any of the information contained in exhibit C. We therefore conclude that the city may withhold the entirety of the submitted information pursuant to section 552.103 of the Government Code. We advise that once the litigation concludes, the applicability of section 552.103 ends. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

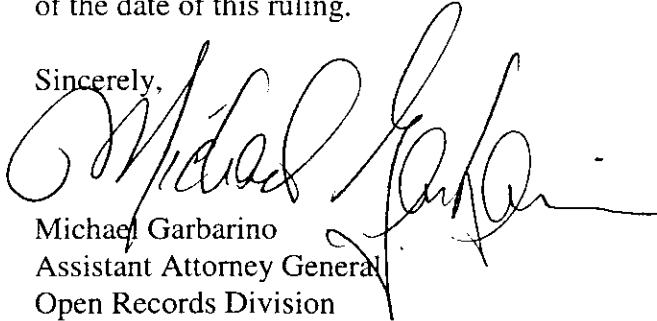
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino", written over the typed name and title.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 145412

Encl. Submitted documents

cc: Ms. Nidia Hafer
5301 Woodgate Drive
Corpus Christi, Texas 78413
(w/o enclosures)